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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,791	12/27/2001	Jinn-Chu Chen	MR2723-138	9290
4586	7590	12/18/2003	EXAMINER	
ROSENBERG, KLEIN & LEE 3458 ELLICOTT CENTER DRIVE-SUITE 101 ELLICOTT CITY, MD 21043			MARX, IRENE	
			ART UNIT	PAPER NUMBER
			1651	
DATE MAILED: 12/18/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

**Application No.**

10/026,791

**Applicant(s)**

CHEN ET AL.

**Examiner**

Irene Marx

**Art Unit**

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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The application should be reviewed for errors and conformity with domestic practice. Error occurs, for example, in the use of Chinese characters at least at page 2, line 8.

The amendment filed 10/3/03 is acknowledged. Claims 10-12 are being considered on the merits.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 is vague, indefinite and confusing in the nature of the material claimed is not defined with sufficient particularity. For example, the recitation of “a kind of biologically active material” renders the claim vague and confusing, since the nature “of a kind of” in this context cannot be readily ascertained. Also the “characteristic of significant amount of polysaccharide inside” renders the nature of this kind of material is uncertain. Is the *Antrodia camphorata* mycelium intended as the material which has the polysaccharide inside or is a particular, albeit undefined biologically active material which has polysaccharides inside intended?

Claim 10 is further is vague and indefinite in the recitation “derived after”, since it is unclear whether the kind of biologically active material is derived by chemical, physical or biological means. Amendment to -- obtained from-- would be remedial.

Claim 12 is vague, indefinite and confusing in that the material claimed is uncertain. The language “As described in claim 11 for the biologically active material...” is not informative regarding what is intended. Thus, the material intended to have the recited properties cannot be determined. Also, the recitation of “can” with respect to the properties renders the claim vague, indefinite and confusing, since the circumstances under which it “can” have the property is uncertain.

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Claim 12 is redundant in the phrase “can stimulate the increase of lymphocytic increase”. The recitation of “type” after “IL-2 of Th1” and “IL-4 of Th2” renders the claim confusing. The cytokine(s) intended are not clearly delineated. Is IL-2 or IL-4 intended?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Li *et al.* or Huang *et al.* (of record) in light of Hseu *et al.* and Wu *et al.*.

The claims are directed to a biologically active material derived from *A. camphorata* mycelium containing polysaccharides.

Each of the references Li *et al.* and Huang *et al.* discloses biologically active material obtained from *A. camphorata* which inherently contains the required derived compositions comprising polysaccharides either derived as a part of the mycelium compositions or derived as part of the culture medium material containing substances such as polysaccharides secreted into the culture medium. See, e.g., Li *et al.*, Example 4; See, e.g. Huang example 3. It is noted that at least the compositions of Huang *et al.* have antitumor activity, which appears to be the activity as claimed in claim 12. Hseu *et al.* is cited as evidence of the high polysaccharide content of *Ganoderma* species (See, e.g., Abstract), and Wu *et al.* is cited to demonstrate that *A. camphorata* is conspecific with *Ganoderma camphoratum* (See, e.g., page 273, col. 2).

Therefore, the invention as claimed is anticipated by the references.

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is 703-308-2922. The examiner can normally be reached on M-F (6:30-3:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Wityshyn can be reached on 703-308-4743. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0926.

A handwritten signature in black ink, appearing to read "Irene Marx", with a stylized, cursive script.

Irene Marx  
Primary Examiner  
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